

Office of
Montana Secretary of State
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POST ELECTION AUDIT GUIDE

The post election audit guide is drafted to provide direction and guidance to county election administrators in the audit process. This draft is subject to change.

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Montana Secretary of State Elections and Government Services (Draft) Post Election Audit Guide

Table of Contents

<u>Post Election Audits – Background</u>	<u>3</u>
<u>Post-Election Audit Checklist and Timeline for 2010 Elections</u>	<u>4</u>
<u>Preparing for Hand Count for Audit</u>	<u>5</u>
<u>Hand Count Process</u>	<u>5</u>
<u>Accounting for Overvotes and Undervotes</u>	<u>6</u>
<u>Reconciliation of Hand Count and Machine Count</u>	<u>6</u>
<u>Classification and Handling of Discrepancies</u>	<u>6</u>
<u>Completing the Reconciliation and Report Form</u>	<u>7</u>
<u>“Not Acceptable” Results</u>	<u>8</u>
<u>“Acceptable” Results</u>	<u>8</u>
<u>Comparison of Post Election Audits and Recounts</u>	<u>9</u>
<u>Changing Vote Totals in Post Election Audits and Recounts</u>	<u>10</u>
<u>Post Election Audit Frequently Asked Questions</u>	<u>11</u>

POST ELECTION AUDITS – BACKGROUND

In the 2007 Legislature, House Bill 632 was introduced to require post election audits in Montana. The bill failed to pass the House by a single vote.

With knowledge that a post election audit bill would be back in subsequent legislative sessions, the Secretary of State's office worked with county election administrators and the League of Women Voters of Montana on a compromise bill.

Members of the Montana Election and Technology Advisory Council provided the technical and process information needed to draft a bill that was workable for county election administrators.

The 2009 Legislature passed the "Postelection Audit Act", effective October 1, 2009. Testifying in support of Senate Bill 155, the postelection audit bill, were the Montana Association of Clerks and Recorders, the Montana Association of Counties (MACo), AARP, the League of Women Voters, Montana Common Cause, and the Secretary of State.

This Guide and the Reconciliation and Report Form are intended to provide guidance regarding the Act. Each is an evolving document, based on successful post election audit practices in other states as well as accommodating current processes in Montana election administration. Inevitably, the Guide and Reconciliation and Report Form will need to be updated and modified as the counties work through the post election process during several election cycles.

Working together on this legislation and implementation of it, county election administrators and the Secretary of State can increase transparency and confidence in the election process, while insuring that the careful and comprehensive processes that result in open, honest, and fair elections in Montana are intact.

Post Election Audit Checklist		
Deadline (filled in by EA)	Task	Completed
	Governing body appoints county audit committee.	
	EA gives instruction to county audit committee on how tabulation equipment counts votes.	
	Before election day, EA color codes each tabulator and ballot container, or implements another system to match each precinct's ballots with tabulator(s).	
	EA schedules and notices county audit (similar process as used to notice a recount or canvass.)	
	SOS notifies counties of randomly selected precincts and contests.	
	EA prepares PEA supplies, forms, guidelines, etc.	
	Conduct Audit (open to the public):	
	EA checks seals on ballot containers to ensure they are intact.	
	EA or audit committee opens ballot containers.	
	EA or audit committee places ballots into stacks per Guide, similar to the method used in a recount.	
	Members of county audit committee hand count stacks of ballots and reconcile number of ballots with total ballots on machine tape, noting on reconciliation form any discrepancy in the total number of ballots.	
	One member reads ballots (each selected contest separately).	
	Two members tally, ensure hand count tallies match each other.	
	EA records results on Reconciliation and Report Form (separate form for each contest audited).	
	Committee members and EA sign Reconciliation and Report Form.	
	Expand audit if required.	
	Re-seal ballots in ballot containers.	
	Send Reconciliation and Report Form to SOS.	
	Conduct official county canvass.	
	Use audit results as definitive results for canvass.	

Post-Election Audit Timeline for 2012 Elections	
June 5 Primary Election	
June 12-14	Earliest date/latest date for state board of canvassers to randomly select precincts, races and ballot issues
June 13	Earliest date for county audit (subject to when the process above is completed and counties are notified of results of random selection)
June 14	Earliest date for county canvass (at least one day after audit)
June 18	Latest date for county audit
June 19	Latest date for county canvass (at least one day after audit)
July 2	Statewide canvass must be complete, results certified
Nov 6 General Election	
Nov 13-15	Earliest date/latest date for state board of canvassers to randomly select precincts, races and ballot issues
Nov 14	Earliest date for county audit (subject to when the process above is completed and counties are notified of results of random selection)
Nov 15	Earliest date for county canvass (at least one day after audit)
Nov 19	Latest date for county audit
Nov 20	Latest date for county canvass (at least one day after audit)
Dec 3	Statewide canvass must be complete, results certified

Preparing for Hand Count for Audit

Based on applicable deadlines, the county election administrator shall determine the date, time and place of the hand count and provide notification as required by law.

The Election Administrator should give a tutorial on how the vote tabulating equipment counts and reports votes to the County Audit Committee as preparation for the hand count. The Election Administrator should also provide to each member of the County Audit Committee instructions on hand counting ballots. Instructions on hand count procedures can be found in the Election Judge Handbook provided by the Secretary of State. **Note:** *not all hand count procedures specified in the Election Judge Handbook are applicable to the post election audit hand count.*

The audit shall be open to the public.

The county audit committee shall break the seal on the container containing the ballots to be counted. **Note:** *the county election administrator may break the seals if preliminary preparation of the ballots is necessary to prepare for the hand count prior to the meeting of the county audit committee. It is recommended that two or more officials be involved in the seal-breaking. The ballots should be resealed after preparation is complete.* The seal-breaking process must be open to the public. Observers may examine the seals prior to the breaking of the seals to make certain that they have not been broken or tampered with.

Absentee ballots that are centrally counted must be separated by precinct for the audit. The election administrator may separate the absentee ballots, but must ensure the process of separating them is open to the public.

Each tabulator(s), tabulator(s) results tape, and ballot container should be color coded or otherwise marked so that each precinct's results and ballots can be tied to tabulator(s).

The audit must be conducted in public view without the use of electronic scanning equipment.

Observers may not be permitted to touch ballots or interfere in any way with the hand count.

Hand Count Process

The post election audit will be conducted similarly to a recount, except that provisions in law that allow votes in a recount to be changed based on the recount board's judgment of the intent of the voter are not applicable to the post election audit hand count. *See page 9 for comparisons between post election audits and recounts.*

The county election administrator shall assemble all ballot containers, forms and supplies necessary for the hand count.

Ballots should be separated in stacks similar to the way ballots are separated for a recount.

The following process is followed for each precinct and contest being audited, with a separate form being completed for each precinct and contest that is subject to the audit:

After the ballots are separated into appropriate stacks, the county audit committee shall hand count each ballot, with one member reading the votes, and two members marking the tallies. PLEASE SEE HAND COUNT PROCEDURE in the Election Judge Handbook.

Note: *the county audit board is not permitted to see the tabulator results until the hand count is completed.*

When the ballots for a particular contest have been hand counted, the two members tallying shall compare their totals. If the two tallies match, that number shall be posted on the Reconciliation and Report Form.

If the two hand count tallies do not match, the ballots must be counted again, until they match.

This process is repeated for each precinct and contest being audited, with a separate form being completed for each precinct and contest that is subject to the audit.

Accounting for Overvotes and Undervotes

An overvote occurs when an elector marks more than the allowable choices for a particular contest that is subject to the post election audit. An undervote occurs when the elector does not mark any choice for a contest that is subject to the post election audit. Each apparently overvoted and undervoted ballot must be examined to confirm whether the machine correctly processed the vote as it is programmed to do. Such examination, if already conducted by election judges, may not need to be conducted by the county audit committee.

Reconciliation of Hand Count and Machine Count

The post election audit will be conducted similarly to a recount, except that provisions in law that allow votes in a recount to be changed based on the recount board's judgment of the intent of the voter are not applicable to the post election audit hand count and therefore are not part of the reconciliation.

The county audit board and county election administrator will compare the original vote count from the tabulator and the hand count. If the hand count results differ from the tabulator results, the audit board and election administrator will analyze the ballots to determine if the reason(s) for the difference can be identified, similar to the process in a recount.

The results of the hand count shall be entered into the form provided. Any difference between the hand count and the tabulator count must be explained to the best of the audit board and election administrator's abilities on the form provided, or on attached sheets if necessary.

Classification and Handling of Discrepancies

Listed below are three general causes of discrepancies between the machine counts and the manual counts during a recount or audit. The county audit committee must carefully consider the reason for each discrepancy that was not identified and resolved by election judges on election day.

1. **Voter error:** Voters might mark optical scan ballots incorrectly, or may not follow the given directions. Because the purpose of the post election audit is to determine if the machine counted the votes correctly, the audit committee should be instructed to count votes consistent with the way an optical scan machine would count votes.

2. **Administrative or election official error:** Administrative errors can happen on a busy election night and be identified later. Again, the purpose of the audit is to determine if the machine processed the votes correctly. An administrative or election official error that is discovered is an explainable difference and will not affect the discrepancy percentage.

3. **Voting system error:** Machine errors are most likely technology-specific. Optical scan machines may be miscalibrated, counts stored on memory cards may be corrupted, or software bugs may cause some ballots to be misinterpreted, either systematically or randomly. Voting system errors such as these would most likely be caught during the pre-election test, or the election day test, and be resolved or, if not resolved, the equipment in question would not be used.

When handling discrepancies, the following general actions are appropriate:

1. Resolution and reporting of discrepancies;
 2. Verification whether the contests involved have been called correctly, through expanded manual counts if required by law; and
 3. Investigation and correction of systematic hardware, software, and procedural problems.
- However, any correction of hardware or software can be made only within the timeframe specified in [13-17-509](#), MCA.

Completing the Reconciliation and Report Form

The Form has been provided in an Excel worksheet with six tabs:

- Candidate Example
- Ballot Issue Example
- Federal Office
- Statewide Office
- Legislative Office
- Statewide Ballot Issue
- Optional Grand Total Sheet for Multiple Precincts/Machines

The county election administrator will enter the following information on the form:

- Header information
 - Reminder:** the county audit board is not permitted to see the tabulator results until the hand count is completed*
- Column A: Candidate Names or Ballot Issue # and Types of Votes
- Column B: Hand Count Audit Tally
- Column C: Machine Tally (Filled in by Election Administrator after Hand Count Tally)
- Column E: Difference (Hand Tally Minus Machine Count Tally)
- Column F: Number of Explainable Differences (Administrative or Election Official Error)
- Column G: Explainable Difference Reasons
- Column H: Unexplained Difference (Column F Subtracted from Column E). In this column, the form will calculate whether the hand count is over or under the machine count, and by how many votes.
- Column I: Other Comments/Explanations

The totals and the calculation of what constitutes .5% or 5 ballots, whichever is greater, will be an embedded formula in the spreadsheet under the heading “Analysis.” The Analysis section formula will calculate and indicate whether any unexplainable difference will result in the machine(s) involved being set aside to be examined and three additional precincts being audited. (The form includes instructions on how to calculate the .5% discrepancy threshold if the form is filled out manually rather than by computer.)

*Please note that if, for example, one candidate receives 10 **more** votes in the hand count than in the machine count, and another candidate in the same precinct receives 5 **less** votes in the hand count than in*

the machine count, and the reasons are unexplained, the spreadsheet should reflect that the unexplained difference is 15 votes.

A separate form must be filed with the Secretary of State for each precinct, and for each of the contests that are audited. The report must be filed as soon as possible and by no later than the deadline for submitting the official county canvass to the Secretary of State.

“Not Acceptable” Results

If the formula indicates that the results are “Not Acceptable”, the same ballots may be hand counted a second time. If the second hand count results in “Not Acceptable” status, the tabulation machine(s) must be removed from service until further review of the machine(s), and an additional three precincts must be hand counted. (The additional three precincts will have been randomly selected and provided by the Secretary of State to the election administrator at the same time as the random selection of the original precincts.) If the expanded hand count results in “Not Acceptable” status, the tabulation machine(s) in the expanded audit must be removed from service until further review of the machine(s).

The Reconciliation and Report Form must be signed by all members of the county audit committee, and by the election administrator. One copy is sent to the Secretary of State, and one copy is posted in the place of auditing.

“Acceptable” Results

If the formula indicates that the results are “Acceptable”, the Reconciliation and Report Form must be signed by all members of the county audit committee, and by the election administrator. One copy is sent to the Secretary of State, and one copy is posted in the place of auditing.

Comparison of Post Election Audits and Recounts

Activity	Post Election Audits	Recounts
Initiated by petition or tie vote	No	Yes
Required in each county after each federal primary election and federal general election	Yes	No
Can include local offices	No	Yes
Requires at least three individuals to count and tally the votes	Yes	Yes
Occurs before the county canvass	Yes	No
Secretary of State reimburses each county for any costs incurred	Yes	No
Requires ballots to be tied to the specific machine or machines that counted them	Yes	No
Requires changing vote totals if hand count reveals voter intent that machine could not determine	No*	Yes
Requires changing vote totals if machine error or administrative or election official error caused machine totals to be incorrect	Yes*	Yes
Results affect the official county canvass	Yes	Yes
Report of results must be sent to the Secretary of State	Yes	Yes**

*The purpose of the post election audit is to determine if the machine counted the votes correctly; therefore the audit committee should be instructed to count votes consistent with the way an optical scan machine would count votes.

**Recount results are only sent to the SOS if the race was for a statewide or state-district office (including legislative) or a statewide ballot issue.

Changing Vote Totals in Post Election Audits and Recounts

Example	Changes Vote Total in Post Election Audit	Changes County Canvass Vote Total in Recount
Voter fills in oval too lightly for machine to read although human eye can determine intent	No*	Yes
Voter makes clear written statement of the voter's intent to vote for (or not vote for) a candidate or make a choice on a ballot issue	No*	Yes
Voter otherwise marks ovals not according to instructions but consistently throughout the ballot	No*	Yes
Administrative or election official error discovered	Yes	Yes
Machine hardware error discovered	Yes	Yes
Machine software error discovered	Yes	Yes
Machine tampering discovered	Yes	Yes

*Because the purpose of the post election audit is to determine if the machine counted the votes correctly, the audit committee should be instructed to count votes consistent with the way an optical scan machine would count votes. Votes that would not be picked up by an optical-scan machine are not counted in the post-election audit, except in cases of machine error or administrator or election official error.

Post Election Audit Frequently Asked Questions

1) What does a random sample audit mean?

- A) "Random-sample audit" means an audit involving a manual count of ballots from designated races and ballot issues in precincts selected through a random process.

2) When is the random audit conducted? May the audit be conducted on the same day as the county canvass?

- A) The random audit is conducted after the unofficial results are available to the public but before the official county canvass. See timeline at beginning of the Guide.

The audit cannot be conducted on the same day as the county canvass. The audit must be completed at least one day before the official county canvass.

3) What ballots are not included in the audit?

- A) Ballots from manual-count counties are not included in the audit.

If any of the races (except races for precinct committee representative) or the statewide ballot issue has a tie or a total within the margins for a recount without a court order, the county is exempt from having to conduct a post election audit.

Also, ballots are not included in the audit if they were not able to be processed by a vote-counting machine and were not resolved because the ballot appeared to have at least one overvote, appeared to be blank, was in a condition that prevented it from being processed by a vote counting machine, or contained a mark, error, or omission that prevented its processing by a vote-counting machine.

4) How many precincts are chosen and what races are chosen?

- A) At least 5 percent of the precincts in the county (a minimum of 1 precinct per county), and an election for a federal race, statewide race, a legislative office race, and one statewide ballot issue.

If there are no statewide ballot issues, these are not included in the audit.

Races will not be audited if they include a retention election for a judicial candidate or a race in which a candidate is unopposed.

5) Are there administrative rules associated with the process?

- A) Yes, the Secretary of State is charged with adopting rules, but the specific process is outlined in this Guide.

6) When and how are the members of the county audit committee chosen?

- A) The county audit committee is composed of at least three members, all of whom are appointed by the county governing body. The members appointed prior to the primary election may at that time be appointed to serve the entire federal election cycle.

The audit committee appointees are chosen from a list of county employees (this list can include county elected and appointed officials and employees of the county election office) and county residents who have offered to serve on the committee, except for election judges who served in the election, a person employed by the vote counting system vendor, or a person who performed maintenance on the vote counting machines subject to the audit.

The members appointed are not required to be registered voters, but must be residents of the county where the post election audit is being conducted.

7) What additional requirements are there for the county audit committee?

- A) They must each be sworn in and the county election administrator serves as the secretary to the committee.

It is recommended that the county election administrator train the audit committee members on how the vote tabulating equipment counts ballots, and on the hand-count process.

8) Who chooses the precincts and races to be audited, and how is this done?

- A) Between 7 and 9 days after the election, the state board of canvassers randomly chooses the precincts, races and statewide ballot issue, as well as three additional precincts in case there is a discrepancy larger than .5% or 5 ballots, whichever is greater, in the post election audit compared to the machine count.

9) Are the selection process as well as the manual audits open to the public?

- A) Yes.

10) How does the state board of canvassers make its random choices?

- A) By using ten-sided dice.

11) How does the state board of canvassers make notifications of the selections?

- A) By directing the Secretary of State to notify each county election administrator of the selections and making a list of the selections available electronically.

12) Once the counties are notified, how long do they have to conduct the manual audits?

- A) See the timetable at the beginning of the Guide.

13) How is the manual audit conducted? What are the differences between a manual audit and a manual recount? When do the vote totals change as a result of the manual audit?

- A) The process is very similar to a manual recount. See page 5 of this Guide for the manual audit process and pages 9 and 10 for applicable manual audit and manual recount comparison charts.

14) What is the process for comparing the post election audit counts against the voting machine counts?

- A) The post election audit counts are compared to the machine counts. If the numbers are below the discrepancy threshold, then the results are certified to the county election administrator and to the Secretary of State.

15) What machine totals are used for the post election audit?

- A) The final totals after any provisional/FWAB ballots are counted the Monday after election day (this rolls to the Tuesday after election day if Monday is a holiday) are always used except in cases in which the provisional/FWAB ballots are not machine-counted.

16) What happens in relation to the county canvass if there is a discrepancy?

- A) If there is a discrepancy, the random sample audit results are the definitive record for the purposes of the canvass for the precinct(s) involved, and those results are certified to the county election administrator and to the Secretary of State.

17) What is the threshold for an unacceptable discrepancy?

- A) The random-sample audit results in a discrepancy of more than 0.5% of total ballots cast or five ballots, whichever is greater, and if the discrepancy is determined to be due to the vote-counting machine and not to administrative or election official error.

18) What happens to the vote counting machine(s) involved if there is a discrepancy of more than .5% or 5 ballots, whichever is greater?

- A) The vote-counting machine(s) involved in the unacceptable discrepancy in that county may not be used in another election until:
 - a. Machine(s) has been examined and tested by a computer software expert in consultation with a voting system vendor; and
 - b. that machine(s) is approved for subsequent use by the Secretary of State.

If there is an unacceptable discrepancy, contact the Secretary of State, who will arrange for a computer software expert to work with the equipment vendor to examine and test the machine(s) in question.

19) Are additional precincts audited if there is a discrepancy of more than .5% or 5 ballots, whichever is greater?

- A) Yes. At least three additional precincts within the county must be audited for the office or ballot issue in question. If the county has fewer than three additional precincts, all remaining precincts must be audited.

Again, if the audit of the additional precincts results in a discrepancy for those precincts of more than 0.5% of total ballots cast or five ballots, whichever is greater, and if the discrepancy is determined to be due to the vote-counting machine and not to administrative error or election official error, the vote-counting machine involved in the discrepancy in that county may not be used in another election until:

- a. it has been examined and tested by a computer software expert in consultation with a voting system vendor; and
- b. that machine is approved for subsequent use by the Secretary of State.

- 20) Are all the state's vote-counting machines of the same type subject to examination if one fails an audit?**
- A) The machine is subject to examination by a computer software expert in consultation with a voting system vendor. The machine(s) that counted the ballots involved in the failed audit is subject to examination, but not all the machines in the state, nor all machines of the same type.
- 21) Can the governing body order a recount?**
- A) Yes. Under 13-15-403 (4) MCA, if during a canvass the board finds an error in a precinct or precincts affecting the accuracy of vote totals, the board immediately may petition for a recount of the votes cast in the precinct or precincts, or for an inspection of ballots as provided by law.
- 22) How are the costs of the audit reimbursed?**
- A) The Secretary of State shall reimburse each county for costs incurred in the post election audit.
- However, a vendor who supplies a vote-counting machine that was purchased after October 1, 2009, and that fails an audit due to software or machine defects or vendor employee error shall pay the costs incurred for the audit of vote-counting machines in the affected county. These provisions must be reflected in the contract for the purchase of vote-counting machines.
- 23) How long are the ballots kept after a federal election?**
- A) After a federal election, the ballots and associated ballot materials must be retained for 22 months, as long as there is no contest begun, recount pending, or appeal of a decision relating to a contest, a recount, or a postelection random-sample audit.